

## Department of Energy

## § 710.27

(2) The Secretary or his special designee for that particular purpose has made a determination that failure to receive and consider such physical evidence would, in view of the access sought to Restricted Data, national security information, or special nuclear material sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(p) The Administrative Judge may request the Local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Administrative Judge and which the Administrative Judge believes need further investigation or clarification. In this event, the Administrative Judge shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The Local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Administrative Judge.

(q) A written transcript of the entire proceedings shall be made and, except for portions containing Restricted Data or national security information, a copy of such transcript shall be furnished the individual without cost.

(r) Whenever information is made a part of the record under the exceptions authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

[59 FR 35185, July 8, 1994, as amended at 71 FR 68730, Nov. 28, 2006]

### **§ 710.27 Administrative Judge's decision.**

(a) The Administrative Judge shall carefully consider the record in view of the standards set forth herein and shall render a decision as to whether the grant or restoration of access authorization to the individual would not en-

danger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Administrative Judge shall consider the factors stated in paragraph 710.7(c) to determine whether the findings will be adverse or favorable.

(b) In reaching the findings, the Administrative Judge shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Administrative Judge shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Administrative Judge.

(c) The Administrative Judge shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Administrative Judge attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Administrative Judge's decision shall be based on the Administrative Judge's findings of fact. If, after considering all of the factors in light of the criteria set forth in this subpart, the Administrative Judge is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Administrative Judge shall render a favorable decision; otherwise, the Administrative Judge shall render an unfavorable decision. Within 15 calendar days of the Administrative Judge's written decision, the Administrative Judge shall provide copies of the decision and the administrative record to

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the Manager and the Director, Office of Personnel Security, DOE Headquarters.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47065, Sept. 11, 2001; 71 FR 68730, Nov. 28, 2006]

### § 710.28 Action on the Administrative Judge's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, Office of Personnel Security, DOE Headquarters, the Manager shall:

(1) Notify the individual in writing of the Administrative Judge's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director, Office of Personnel Security, DOE Headquarters, in paragraph (c) of this section if the decision is favorable to the individual; and,

(4) Provide the individual and/or counsel or representative, a copy of the Administrative Judge's decision and the administrative record.

(b) If the Administrative Judge's decision is unfavorable to the individual:

(1) The individual may file with the Director, Office of Personnel Security, DOE Headquarters, a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director, Office of Personnel Security, DOE Headquarters may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Administrative Judge's decision shall be considered final if the individual does not: file a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for further re-

view of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section; or, file a written request for a further review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Administrative Judge's decision is favorable to the individual, within 30 calendar days of the individual's receipt of the Manager's notice:

(1) The Manager or the Director, Office of Personnel Security, DOE Headquarters, may file a written request for further review of the decision by the Appeal Panel along with the statement required by paragraph (e) of this section;

(2) The Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security, may, at the written request of the Manager or Director, Office of Personnel Security, DOE Headquarters, extend the time for filing a request for further review of the decision by the Appeal Panel; or

(3) The Manager, with the concurrence of the Director, Office of Personnel Security, DOE Headquarters, shall grant or reinstate the individual's access authorization.

(d) A copy of any request for further review of the individual's case by the Appeal Panel filed by the Manager or the Director, Office of Personnel Security, shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the Appeal Panel shall include with the request a statement identifying the issues on which it wishes the Appeal Panel to focus. A copy of such statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

[66 FR 47065, Sept. 11, 2001, as amended at 71 FR 68730, Nov. 28, 2006]

### § 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager,